vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1178 OF 1997

Balmukund P. Parikh ... Petitioner

V/s.

Administrative Council of
Maharashtra Technical Education
Society & Ors. ... Respondents

Ms.N.D. Buch for Petitioner
Mr.M.H. Solkar, AGP, for Respondent No.5

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 19, 2007**

ORAL JUDGMENT:

. Dr.Balmukund Parikh, the original petitioner, has challenged the order of the College Tribunal passed on 29.10.1996 in Appeal No.12 of 1996(S). Unfortunately during the pendency of this petition, Dr.Parikh passed away on 23.10.2003. His heirs have now been brought on record and are prosecuting the present petition.

2. The original Petitioner, Dr.Parikh, challenged his compulsory retirement by the respondents with effect from 9.4.1996. The appeal filed by him before the Tribunal was dismissed. Today, the heirs of Dr.Parikh do not wish to challenge the order of compulsory retirement but claim that the arrears of pension, provident fund, gratuity and leave encashment be paid to them on the basis that Dr.Parikh was compulsorily

retired on 9.4.1996.

3. Ms.Buch, appearing for the petitioner, submits that admittedly the original petitioner had not exercised his option for payment of pension under Death cum Retirement Gratuity scheme. She points out a Government Resolution dated 20.2.1985 under which clause 8 provides as follows:

> 8. ..... shall have a right to exercise an option either (a) to continue in Contributory Provident Fund Scheme or (b) to come over to Pension and Death-cum-Retirement Gratuity Scheme subject to the following conditions:
>
> (a) those who have superannuated on or after 1st October 1982 and who have received full share of contribution of management together with interest thereon, provided they are willing to refund this amount with six percent simple interest thereon till the date of actual refund; and
>
> (b) those who have been employed on or before 30th September 1982 in substantive posts continuously but have not superannuated within a period of six months from the date of this

Resolution in the form appended to this Resolution.

Those employees who are covered under (b) above, if they do not exercise any option within the time-limit prescribed above shall be deemed to have exercised option in favour of Pension and Death-cum-Retirement Gratuity Scheme sanctioned under this Resolution.

The option once exercised shall be final.

The time-limit for exercising the option shall not be extended further.

(c) Those employees who have been recruited on or after 1st October 1982 shall not have any option, but they shall be governed by the Pension and Death-cum-Retirement-Gratuity Scheme sanctioned under this Resolution, provided they are otherwise eligible.

3. In view of the fact that the heirs of Dr.Parikh, who are now the petitioners, do not wish to challenge the order of compulsory retirement, Ms.Buch, appearing for them, submits that all the dues payable to Dr.Parikh upto the date of his death be paid over to his heirs.

Accordingly, the following order is passed:

ORDER

(i) The heirs of Dr.Parikh who are now on record as Petitioners shall be paid the arrears of pension till the death of the original petitioner i.e., 23.10.2003.

(ii) The provident fund dues and gratuity dues shall be paid to the petitioners till the date of compulsory retirement.

(iii) Leave encashment, if any, shall also be paid upto the date when the original petitioner was compulsorily retired.

(iv) The aforesaid amounts shall be paid over to the petitioners within eight weeks from today. The Respondent school will render all necessary aid to ensure that the petitioners are paid the amounts by the Institution/Government as expeditiously as possible.

4. Writ petition is disposed of in the above terms.